

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In re Applications of

STANFORD SPRINGEL AS CHAPTER 11
TRUSTEE FOR THE BANKRUPTCY ESTATE
OF INNOVATIVE COMMUNICATION
CORPORATION, Transferor and Assignor,

and

NATIONAL RURAL UTILITIES
COOPERATIVE FINANCE CORPORATION
AND ITS SUBSIDIARIES, Transferee and
Assignees,

For Consent to Transfer Control and Assign
Commission Licenses and Authorizations
Pursuant to Sections 214(a) and 310(d) of the
Communications Act of 1934, as Amended

WC Docket No. 09-82

**OPPOSITION TO ATLANTIC TELE-NETWORK, INC. PETITION TO DENY
OR, ALTERNATIVELY, TO GRANT WITH CONDITIONS**

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I. INTRODUCTION AND SUMMARY

Stanford Springel, as Chapter 11 Trustee (“Trustee”) for the bankruptcy estate of Innovative Communication Corporation (“New ICC”), by its attorneys, hereby opposes the Petition filed by Atlantic Tele-Network, Inc. (“ATN”) seeking to deny or condition the above-captioned applications (collectively referred to as “the Application”).¹ The Petition proposes an

¹ Applications of Stanford Springel as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation and National Rural Utilities Cooperative Finance Corporation and its Subsidiaries for Consent to Transfer Control and Assign Commission Licenses and Authorizations Pursuant to Sections 214(a) and 310(d) of the Communications Act of 1934, as Amended, WT Docket No. 09-82 (filed May 19, 2009) (“New ICC/CFC Application”).

untimely collateral attack on the bankruptcy process, which would create a jurisdictional conflict between the FCC and the Bankruptcy Court. It is longstanding Commission practice to avoid such conflicts, where possible. In this case, harmony between the Communications Act and the Bankruptcy Code may be achieved by denying ATN's divestiture proposal. Moreover, the proposed divestiture would not serve the public interest, among other reasons, because the cost of separating the integrated operations of the Virgin Islands Telephone Corporation ("Vitelco") and Caribbean Communications Corporation and St. Croix TV, Inc. (collectively, "Innovative Cable") would exceed any benefit. By contrast, the transfer to the National Rural Utilities Cooperative Finance Corporation ("CFC") would advance the rehabilitation of New ICC initiated under the Trustee's stewardship and competitively strengthen the company. Accordingly, ATN's Petition should be denied and the proposed transfer to CFC expeditiously granted.

II. ATN'S PETITION TO DENY IS A TIME-BARRED, COLLATERAL ATTACK ON THE BANKRUPTCY PROCESS.

ATN's request that the FCC revisit the Bankruptcy Court's decision regarding grouping of New ICC's assets and acceptance of the Rural Telephone Finance Cooperative's ("RTFC") credit bid sets up an unnecessary jurisdictional conflict between the FCC and the Bankruptcy Court.² The Commission should deny this request, consistent with its longstanding policy of avoiding conflict between federal statutory schemes – in particular, the Communications Act and the Bankruptcy Code – where the statutes in question may be accommodated without conflict.

² ATN calls on the Commission to step into the shoes of the Bankruptcy Court to review how New ICC's assets should have been packaged for sale, Petition of Atlantic Tele-Network, Inc. To Deny or, Alternatively, to Grant With Conditions, at 11 (filed July 29, 2009) ("ATN Petition") ("the Commission must examine ... the Trustee's decision as to how these assets should be packaged for sale..."), and the Bankruptcy Court's decision to accept RTFC's credit bid. *Id.* ("the Commission must examine ... the Trustee's ... selection of the entity to purchase the so-called Group One assets").

Such accommodation is possible in this case. Moreover, ATN's request is untimely given ATN's active participation in the bankruptcy process and failure to challenge the Bankruptcy Court's decision with respect to asset grouping despite ample opportunity to do so. Accordingly, ATN's Petition should be denied.

The role and jurisdiction of the Bankruptcy Court and the Commission are clear and, in this instance, not in conflict. The Trustee is under a statutory obligation to administer and manage New ICC's business affairs subject to review by the Bankruptcy Court.³ The Trustee has a fiduciary obligation to protect and preserve the estate assets and to administer such assets in the best interest of the creditors.⁴ Consistent with this mandate, the Trustee divided New ICC's assets into three groups for sale⁵ and included Vitelco and Innovative Cable – the New ICC subsidiaries operating the existing, integrated telephone and cable operations – in the Group One assets. No party in interest objected to the asset grouping. ATN, for its part, not only did not object but *actively pursued the purchase* of the Group One assets, including the integrated telephone and cable operations it now urges the FCC to break-up as they await purchase by a competitor. The Bankruptcy Court approved the asset grouping, as well as the proposed sale to RTFC (with rights subsequently to be assigned to CFC), on April 9, 2009 in its Interim Sale

³ See 11 U.S.C. § 1108.

⁴ See *In re WHET, Inc.*, 750 F.2d 149 (1st Cir. 1984) (per curiam) (trustee has a fiduciary obligation to conserve the assets of the estate and to maximize distribution to creditors); see also *Maislin Indust., U.S., Inc. v. A.J. Hollander Co.*, 69 B.R. 771 (E.D. Mich. 1986); *In re Russell*, 60 B.R. 42 (Bankr. W.D. Ark. 1985); *In re V. Savino Oil & Heating Co.*, 99 B.R. 518 (Bankr. E.D.N.Y. 1989).

⁵ The Group One Assets consist of the telecommunications and cable television businesses in the U.S. Virgin Islands, the British Virgin Islands, and the Netherlands Antilles. The Group Two Assets consisted primarily of cable television operations in Martinique, Guadeloupe, and France. The Group Three Assets consisted of The Daily News Publishing Co., Inc.

Order.⁶ Moreover, on July 14, 2009, the Federal Trade Commission terminated early its review of the proposed transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1975 (“HSR Act”), having concluded that the sale did not raise competition issues that would warrant further investigation.

The Commission’s role, by contrast, is to make an independent determination regarding the transferee’s – in this case, CFC’s – qualifications to be a Commission licensee and whether the public interest will be served by the grant of the Application.⁷ Commission review is limited to the transferee presented in the application, not some alternative or hypothetical transferee.⁸ Highlighting that its request is not germane to the Commission’s transfer of control process, ATN’s proffered condition proposes an alternative, hypothetical transaction involving different assets and yet-to-be-identified buyers. Moreover, to the extent the Commission proposes conditions on a transaction in furtherance of its public interest mandate, it is longstanding

⁶ *Interim Order (A) Approving Sale of Group 1 Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (B) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (C) Granting Related Relief*, In re Innovative Communications Corp., No. 07-30012 (Bankr. V.I., Apr. 9, 2009) (Doc. No. 1206).

⁷ *Applications of Interactive Control Two, Inc.*, Order on Reconsideration, 16 FCC Rcd 18948, 18960 (¶ 28) & n.96 (WTB 2001); *see also Station KDEW(AM), DeWitt, Arkansas Application for Assignment of License and Application for Involuntary Transfer of Control*, Memorandum Opinion and Order, 11 FCC Rcd 13683, 13687 (¶ 10) (1996) (explaining that the Commission will not undertake an independent investigation of allegations that there were “mistakes, illegalities, and irregularities” in a bankruptcy court’s decision, but rather will leave such disputes for resolution by tribunals specifically charged with reviewing such matters on appeal).

⁸ *See, e.g., Applications of Craig O. McCaw and American Telephone and Telegraph Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5917 (¶ 150) (1994); *Estate of Peggy Haley, N.C.M.*, Letter Decision, 23 FCC Rcd 12687 (2008) (rejecting a Petitioner’s claim that it should be the assignee because the Commission may not consider alternative buyers when considering an assignment application).

Commission policy to limit new regulatory obligations to transaction-specific conditions.⁹ Here, ATN proposes a break-up of existing, integrated telephone and cable operations that long pre-date both the proposed transfer to CFC and inclusion of the New ICC subsidiaries supporting those operations in the Group One assets. As such, ATN's proposal is wholly unrelated to the transaction under review.

Where the Commission may discharge its statutory duties without conflict with the Bankruptcy Code, it is longstanding Commission policy to do so. *Applications of Arlie L. Davidson and Associates, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15382, 15388-89 (¶ 17) (1996) (“The Commission has consistently declined to consider what, in essence, is a collateral attack on a bankruptcy court determination...”); *Applications to Assign Wireless Licenses from WorldCom, Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 6232, 6241 (¶ 22) (WTB 2004) (“The Commission will not revisit the terms of the transactions already reviewed and approved by the Bankruptcy Court in the absence of a showing that Petitioners will be harmed by approval of the license assignments under consideration”); *Applications of TV Active, LLC*, Order on

⁹ See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17463 (¶ 29) (2008) (“Cellco/Atlantis MO&O”); *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, 12480-81 (¶ 30) (2008); *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20304-05 (¶ 13) (2007); *Applications of AT&T Inc. and BellSouth Corporation for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5674 (¶ 21) (2007); *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11538 (¶ 19) (2006); *Applications of Nextel Communications, Inc. and Sprint Corporation*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13978 (¶ 22) (2005); *Applications of Western Wireless Corporation and ALLTEL Corporation*, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13065 (¶ 20) (2005).

Reconsideration, 16 FCC Rcd 18938, 18944 (¶ 16) (Pub. Safety and Private Wireless Div. 2001) (“If TV Active believes that the Bankruptcy Court erred, it must seek a remedy through the judicial process rather than at the Commission”); *Applications of D.H. Overmyer*, Memorandum Opinion and Order, 94 FCC 2d 117, 122-24 (¶¶ 8-9) (1983) (refusing to hear allegations of “mistakes, illegalities, and irregularities” in a bankruptcy court’s decision as “such disputes should be left to those tribunals which are specifically charged with reviewing such matters on appeal”).

In this case, grant of ATN’s proposed condition would, among other legal deficiencies, create a conflict between FCC and Bankruptcy Court jurisdiction with respect to the Group One asset grouping and proposed sale. By contrast, denial of the non-transfer specific request to revisit the Trustee’s asset grouping and break up existing, integrated telephone and cable operations that long pre-date the proposed transfer to CFC will allow the FCC to fully discharge its statutory duties without conflict with the Bankruptcy Code. Given these alternatives, Commission precedent dictates denial of ATN’s proposed condition.

In addition, as a challenge to the Trustee’s asset grouping and the Bankruptcy Court’s Interim Sale Order affirming that grouping, ATN’s Petition is untimely.¹⁰ ATN was not only aware of the bankruptcy proceedings, but by its own admission, it was “a participant in the auction process conducted by Mr. Springel at the end of 2008 for the sale of New ICC’s so-

¹⁰ The FCC, too, was aware of and had an opportunity to participate in the bankruptcy process. As required by Commission rules, the Trustee notified the FCC regarding New ICC’s entrance into bankruptcy. *See* ULS File Nos. 0002773969, 0002893000, 0002893472, 0002893496, 0002990980, 0002991008, 0002991199, 0002994750, 0003179893, 0003179897, 0003179902, 0003706786, 0003722958, 0003722975, 0003722992 and 0003773424; IBFS File Nos. ITC-T/C-20081231-00551 and ITC-T/C-20081231-00552. Commission staff have informed New ICC that, consistent with their regular practice with respect to bankruptcies involving FCC license holders, they were aware of and monitored the bankruptcy proceedings involving New ICC.

called Group One assets,” including Vitelco and Innovative Cable.¹¹ Accordingly, ATN, which characterizes itself as a “sophisticated investor,”¹² had ample opportunity to challenge the Trustee’s decision to include the wireline and cable companies in the Group One assets before the Bankruptcy Court. ATN never did. In fact, ATN sought to purchase the Group One assets and has had a change of heart regarding the asset grouping only now when the assets await purchase by a competitor. Having slept on its rights, ATN is now time-barred from making a collateral attack on the Trustee’s asset grouping decision and the Interim Sale Order.

III. DIVESTITURE OF THE CABLE COMPANIES WOULD NOT SERVE THE PUBLIC INTEREST.

Even if the competition issues raised by ATN were transaction-specific – and they are not, as discussed in Part II, above – they are totally devoid of merit. The unique characteristics of the U.S. Virgin Islands – including, *inter alia*, demography, geography, and climate – not the integration of New ICC’s telephone and cable operations, have challenged *all* providers of communications services in the U.S. Virgin Islands, including New ICC. Yet, despite these challenges, wireless competition flourishes and telephone and cable rates in the U.S. Virgin Islands compare favorably with similar markets in the Caribbean and elsewhere. Given these facts, the costs of separating the integrated operations of Vitelco and Innovative Cable – which are not even mentioned in ATN’s Petition – would far exceed any benefits and be passed on to consumers in the U.S. Virgin Islands as increased rates. Accordingly, the proposed divestiture condition should be denied.

¹¹ ATN Petition at 3.

¹² *Id.*

A. The Unique Challenges Of The U.S. Virgin Islands Have Frustrated All Providers Of Communications Services In The U.S. Virgin Islands.

All providers of services face challenges in serving the U.S. Virgin Islands. As ATN indicates:

- the U.S. Virgin Islands is “a tiny economy with a population of only 108,000 and a low per-capita income of US\$14,500”;
- there are no readily adjacent geographic markets to facilitate entry by competitors;
- mountainous terrain makes line-of-sight communications difficult for wireless providers;
- the cost of transporting equipment or ensuring the availability of skilled technicians is heightened by the distance from the U.S. mainland;
- rocky terrain makes it difficult and expensive to bury plant; and
- outside plant is subject to salt-based corrosion from the ocean, hurricanes and tropical storms.¹³

A number of other factors also impede broadband deployment throughout the U.S. Virgin Islands, including the fact that subscribers are spread across three separate islands, the need to store large amounts of spare equipment and parts as well as back-up power and systems for emergencies, and the warm moist tropical climate that leads to enhanced need for equipment and facilities to be protected from the environment.¹⁴ The factors enumerated above make the U.S. Virgin Islands a uniquely challenging market in which to provide communications services. It is these factors, which New ICC wrestles with on a daily basis, that pose challenges to broadband

¹³ *Id.* at 22-24.

¹⁴ *See* Comments of Innovative Telephone, CC Docket No. 00-256, at 3-4 (Feb. 4, 2002).

deployment in the U.S. Virgin Islands, not integration of Vitelco and Innovative Cable. ATN is very familiar with these challenges, which contributed to the failure of its Choice TV wireless cable service in the U.S. Virgin Islands.

B. U.S. Virgin Island Residents Nonetheless Enjoy Service Comparable to That on the Mainland

Despite these challenges, residents of the U.S. Virgin Islands enjoy communications service comparable to that available on the mainland. As on the mainland, competing wireless voice and broadband networks¹⁵ have flourished in the U.S. Virgin Islands. Wireless services in particular have flourished in recent years. Mobile subscribers in the U.S. Virgin Islands *exceed* landline subscribers by 30 percent.¹⁶ Given those figures, it is axiomatic that wireline-for-wireless substitution is occurring. This is not surprising in a market served by four facilities-based wireless providers – AT&T Mobility, Sprint Nextel, Innovative Wireless and T-Mobile¹⁷ – and several mobile virtual network operators, including Virgin Mobile USA.¹⁸

Moreover, and despite the difficulties of providing service in the U.S. Virgin Islands, rates for *non*-wireless services remain comparable both to rates in the continental United States and elsewhere in the Caribbean basin. With respect to landline telephony, the Federal-State Joint Board on Universal Service’s December 2007 monitoring report shows that residential rates in

¹⁵ ATN’s Choice Communications and VI PowerNet compete in the wireless broadband market in the U.S. Virgin Islands.

¹⁶ There are approximately 61,000 wireline access lines in the U.S. Virgin Islands. In contrast, it is estimated that there are over 85,000 wireless subscribers in the U.S. Virgin Islands.

¹⁷ T-Mobile does not currently sell service locally, but does own and operate an existing network of facilities in the U.S. Virgin Islands.

¹⁸ The Commission has noted that “[MVNOs] present even more competition to traditional facilities-based carriers” and that resale competition has been growing. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Twelfth Report, 23 FCC Rcd 2241, 2256-57 (¶ 21) (2008) (quoting Comments of CTIA - The Wireless Association to the Notice of Inquiry, WT Docket No. 07-71, at 14 (May 7, 2007)).

urban cities vary from \$17.10 to \$37.01 per month.¹⁹ These rates include end user common line charges (“EUCL”) and taxes. The comparable rate for Vitelco is \$29.15 (\$21.65 Basic Rate + \$6.50 EUCL + \$1.00 911 surcharge). This rate is well below the maximum urban rate and within one standard deviation of the average rate of \$25.27.²⁰ Further, this report shows that average national rates have increased slightly since 2003 when Vitelco’s current – and unchanged – local rates were established.²¹

Innovative Cable’s rates are also comparable to those in the continental United States. For example, Comcast Virginia provides approximately 135 channels with no premium services in their basic digital starter package for \$59.00 per month after an initial discount. Innovative Cable charges \$46.94 per month for 94 digital channels with no premium services. Both rates are exclusive of taxes and franchise fees. Taking into account that the cost of living in the U.S. Virgin Islands is between 30 and 50 percent higher than that on the mainland,²² the rates charged by Innovative Cable again make the case that consumers in the U.S. Virgin Islands are not harmed by the integration of Vitelco and Innovative Cable.

¹⁹ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, CC Docket No. 98-202, Tables 7.9 and 7.10, at 7-24 and 7-25 (2007) (“Monitoring Report”).

²⁰ *See id.*, Table 7.10, at 7-25.

²¹ Vitelco’s residential rates also compare very favorably with the rest of the Caribbean basin. Vitelco has a residential flat monthly rate for basic service of \$21.65 (before the EUCL and taxes). This is the second lowest rate in the basin, with only Barbados having a lower rate. The remaining seven islands for which data is available all have a higher residential rate than Vitelco. Vitelco’s residential rate is almost \$7 less than the average residential rate of the other Caribbean islands. Testimony of David C. Blessing, *In re Investigation of Rates of Virgin Islands Telephone Corporation d/b/a Innovative Telephone*, PSC Docket No. 578, at 29.

²² *See, e.g.*, Virgin Islands Moving Center, Cost of Living, http://www.vimovingcenter.com/cost_of_living/ (last visited July 21, 2009) (estimating that the cost of living in the U.S. Virgin Islands is on average 33% higher than most U.S. jurisdictions).

C. The Costs of Separating The Integrated Operations Of Vitelco And Innovative Cable Would Exceed Any Benefit.

ATN's divestiture proposal fails to account for the significant costs that would be involved in separating Vitelco and Innovative Cable's integrated operations, which would exceed any benefit. Separating Vitelco and Innovative Cable would dramatically alter the cost structure of the two companies and significantly increase the cost of service. Currently, Vitelco and Innovative Cable have integrated executive management, engineering, purchasing, customer service and back office operations. Current integrated operations include:

- shared technical and maintenance crews – trained to perform on both the telephone and cable TV network – to address installation, maintenance, and customer “trouble ticket” requests;
- shared supervisory and management staff overseeing the technical staff;
- shared fleet vehicles;
- shared customer service staff – call center staff, payment clerks and walk-in customer center employees handle all customer service activity related to both the telephone and cable operations;
- shared supervisory and managerial staff for customer service operations;
- shared training and human resources staff;
- shared warehouse facilities;
- common billing system and back office support systems;
- shared IT functions – systems and equipment as well as manpower; and
- shared corporate facilities.

Divestiture would mean duplicating these operations for one of the companies, while the inheritor of the legacy back office operations would find the revenue used to support the

operations radically diminished. A stand-alone company would require a separate motor fleet and independent supervisory and management personnel for the now-separated workforces. The necessity of an independent billing, inventory, operation support system and accounting system significantly would increase capital expenses, along with the payroll expense of separate IT personnel. A separate human resources staff would also be required and each entity would require more staff to operate separately than in combination because of the destruction of economies of scale. Accordingly, divestiture would increase operating costs for both entities, which would either erode operational margins or be borne directly by consumers through higher prices.²³

In the U.S. Virgin Islands' market, fixed-line voice and video services are cost-effective only if those services are offered by a single provider. Only by means of cost-sharing are the residents of the U.S. Virgin Islands able to enjoy communications services at rates that their counterparts in the mainland receive. In Section 652 (d)'s explicit permission for combinations of certain cable and telephone companies, Congress recognized that cost sharing in nonurban areas is in the public interest.²⁴ Vitelco and Innovative Cable are simply not cost-effective as stand-alone businesses.²⁵

²³ The shared services model currently followed properly allocates costs of providing the respective services to the relevant operations to ensure that the regulated business does not subsidize the non-regulated business. ATN fails to recognize that Vitelco would not be free to recoup increased costs incurred to duplicate customer service and back office services because it must first obtain PSC approval to implement any rate increase. Therefore, the Trustee never contemplated selling these operations as separate entities because it makes no business sense to do so.

²⁴ 47 U.S.C. § 572(d)(5). *See also* 47 C.F.R. § 76.505(d)(5).

²⁵ It is noteworthy that the Obama Administration's goal of expanding broadband availability to unserved and underserved areas would be frustrated by ATN's divestiture proposal. In addition to delaying broadband deployment by subordinating that activity to

IV. EXPEDITIOUS GRANT OF THE PROPOSED TRANSFER TO CFC WOULD SERVE THE PUBLIC INTEREST.

The Commission should not countenance ATN's effort to associate the Trustee and CFC with the malfeasance of New ICC's prior owner. All of the mismanagement and malfeasance so breathlessly recounted in ATN's Petition is a matter of public record and has been disclosed to the FCC and the U.S. Virgin Islands Public Service Commission. None of it is attributable to the Trustee or CFC. Indeed, that history is the reason for the bankruptcy, the period of the Trustee's stewardship of New ICC, and the process that has led to the proposed transfer to CFC. ATN's disquisition on this ancient history should not distract the FCC from the central focus of its public interest analysis: whether the proposed transfer to CFC will serve the public interest and benefit consumers in the U.S. Virgin Islands. A review of the rehabilitation of New ICC under the Trustee's stewardship and CFC's commitment to continue that rehabilitation strongly demonstrates that the proposed transaction will serve the public interest.

ATN's "disclosure" of the public record history of New ICC's mismanagement under its prior ownership is irrelevant to the Commission's public interest analysis.²⁶ ATN's claim that the Parties have attempted to "sweep [these facts] under the rug"²⁷ is simply untrue. To the contrary, New ICC and the Trustee have fully disclosed this history of mismanagement and malfeasance to the Commission and the Bankruptcy Court.²⁸ The former New ICC Chairman

separation of the telephone and cable operations of New ICC's operating units, it would not be cost effective to upgrade a stand-alone Vitelco's network to provide broadband.

²⁶ See, e.g., ATN Petition at 15.

²⁷ *Id.*

²⁸ See, e.g., Complaint at 4, *Innovative Communication Corp.*, No. 07-30012, Dist. Ct. of V.I., Bankr. Division (filed Oct. 19, 2007) (Doc. No. 169); Regular Meeting of the U.S. Virgin Islands Public Service Commission, Dec. 8, 2008, Transcript at 57; *New ICC/CFC Application*, Exhibit 1, Description of Proposed Transaction, Public Interest Showing and Related Requests

has no role in the existing and future operation of the companies and will not benefit from the sale of New ICC's assets. In addition, his bad acts are not attributable to the Trustee, who has made it his business to remediate the damage, or to CFC. The Commission looks favorably on such activities, which promote the public interest. Indeed, Commission precedent provides that a former owner's inadequacies are irrelevant to the analysis of whether a proposed transaction serves the public interest.²⁹

In the wake of the disclosed malfeasance, the Trustee's stewardship of New ICC has been a period of significant rehabilitation and strengthening of New ICC's operating company subsidiaries. Under the Trustee's stewardship, New ICC's operating subsidiaries have been stabilized, improving cash flow and the companies' ability to make capital investments in and improve their networks. For example, the Trustee oversaw full digitization of the cable network on St. Thomas, St. John and St. Croix in less than twelve months. During this period, New ICC also has invested in three CALIX digital remote switching devices to expand broadband penetration and relieve strained cable facilities. Two other such switches will be in place prior to completion of this transaction. In addition, under the Trustee's oversight, New ICC has begun deploying additional fiber capacity across the islands and completed a significant deployment of

and Showings, at 17 ("Public Interest Statement") (noting the instability of the companies prior to the bankruptcy).

²⁹ Under Section 310(d) of the Communications Act, the Commission must determine whether the parties meet the requisite qualifications to hold and transfer licenses, not whether a former owner of one of the parties meets the qualifications. *See, e.g., Applications Filed for the Transfer of Control of Embarq Corp. to CenturyTel, Inc.*, Memorandum Opinion and Order, WC Docket No. 08-238, 2009 FCC LEXIS 3020, ¶ 13 (FCC June 25, 2009); *Applications of Sprint Nextel Corp. and Clearwire Corp. for Consent to Transfer Control of Licenses, Leases and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17582 –83 (¶ 23) (2008); *Cellco/Atlantis MO&O*, 23 FCC Rcd at 17464 (¶ 31); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21546 (¶ 44) (2004); *Applications of Nextel Communications, Inc. and Sprint Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13979 (¶ 24) (2005).

large bandwidth fiber capacity between the Charlotte Amalie CO and Tutu Park CO to support higher speed broadband services. New ICC has made significant facilities repairs and replaced faulty generators. And the company recently has placed an order for over 50 new fleet vehicles – the first such purchase since 2003.

In addition, the Trustee has overseen necessary maintenance on New ICC's network and facilities. The Trustee has made customer service a focus, and improved New ICC's performance on customer service metrics. To address under-funded obligations, the Trustee, working closely with the Pension Benefit Guaranty Corporation, has made payments of over \$5.2 million to the company's two pension plans, keeping New ICC current on all 2008 and 2009 payments and substantially paying down the 2007 accumulated deficit left by prior management. CFC has committed to continue this effort and ensure funding of the pension plans. And the Trustee has initiated a network modernization design study of both the Vitelco and Innovative Cable infrastructure in order to determine how best to deploy network assets to support existing and future services, including ubiquitous high speed broadband services across the Territory. During his stewardship of New ICC, the Trustee has made regulatory and legal compliance a priority and ensured that the company's conduct is above reproach.

Expeditious approval of the proposed transfer to CFC will permit the principal providers of telecommunications and cable television services in the U.S. Virgin Islands to continue providing those services without interruption. The Commission has recognized the "economic and social benefits" of facilitating the emergence from bankruptcy of telecommunications providers, and has likewise found that enabling providers to continue to serve their customers

without disruption benefits the public interest.³⁰ As stated in the Application, the benefits of continuity of service and improved solvency are particularly critical here because New ICC's operating subsidiaries include the primary providers of local telephone, domestic and international interexchange service as well as the only terrestrial provider of MVPD services in the U.S. Virgin Islands.³¹ Approval of the proposed transfer to CFC will continue and accelerate the rehabilitation and competitive strengthening of the New ICC operating companies without the uncertainty created by the ongoing bankruptcy proceedings. CFC, with its ready access to the capital markets and broad experience with rural utilities, including rural telephone companies, is well situated to continue the stabilization, rehabilitation and competitive strengthening of the operating subsidiaries. CFC has the financial wherewithal to make the capital expenditures necessary to improve and maintain New ICC's networks and to implement the recommendations of the network modernization design study commissioned by the Trustee. These initiatives will pay dividends through the introduction of new services and improved service quality and reliability of communications, including disaster planning and recovery, for the benefit of the people of the U.S. Virgin Islands. In addition, the proposed transfer will facilitate investment in Innovative Wireless' network, which will allow it to enhance its ability to compete in the robust wireless market in the U.S. Virgin Islands. Accordingly, the Commission should expeditiously grant the proposed transfer.

³⁰ See *Applications of WorldCom, Inc. and its Subsidiaries (debtors-in-possession), Transferor, and MCI, Inc., Transferee, for Consent to Transfer and/or Assign Section 214 Authorizations, Section 310 Licenses, and Submarine Cable Landing Licenses, Memorandum Opinion and Order*, 18 FCC Rcd 26484, 26503 (¶ 29) (2003).

³¹ Public Interest Statement, at 16.

V. CONCLUSION

For the foregoing reasons, the Commission should deny ATN's Petition and expeditiously grant the pending transfer of control Applications.

Respectfully submitted,

**STANFORD SPRINGEL, AS CHAPTER
11 TRUSTEE FOR THE BANKRUPTCY
ESTATE OF INNOVATIVE
COMMUNICATION CORPORATION**

A handwritten signature in dark ink, appearing to read "Scott Delacourt", is written over a horizontal line.

Henry M. Rivera
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Trustee for the Bankruptcy Estate of Innovative
Communication Corporation*

July 22, 2009

Certificate of Service

I, Edgar Class, of Wiley Rein LLP, hereby certify that on July 22, 2009, a copy of the foregoing "Opposition to Atlantic Tele-Network, Inc. Petition to Deny or, Alternatively, to Grant With Conditions" was served on each of the individuals listed below via electronic mail.

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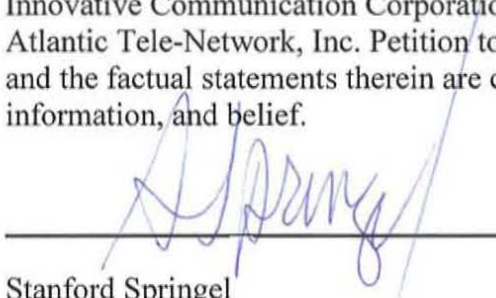
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AFFIDAVIT OF STANFORD SPRINGEL

I, Stanford Springel, am the Chapter 11 Trustee for the bankruptcy estate of Innovative Communication Corporation. I have reviewed the preceding Opposition to Atlantic Tele-Network, Inc. Petition to Deny or, Alternatively, to Grant with Conditions, and the factual statements therein are complete and accurate to the best of my knowledge, information, and belief.



Stanford Springel
Chapter 11 Trustee
Innovative Communication Corporation

Dated: July 22, 2009